



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MABELLE M. DANT)

Appearances:

For Appellant: John P. Apicella, Attorney at Law

For Respondent: Crawford H. Thomas, Associate Tax Counsel

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FRANCHISE TAX BOARD

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on Protests to proposed assessments of personal income tax in the amounts of \$2,811.95, \$3,202.24, \$3,512.04, \$13,599.89, \$2,490.36, \$2,510.92, \$2,566.37 and \$2,047.71 for the years 1948 through 1955, respectively.

Appellant is the widow of a man who came to the Pacific Northwest in 1903. Appellant's husband developed large lumber and shipping businesses which were operated through corporate offices in Portland, Oregon. He was personally active in the businesses until his death in 1945. After her husband's death Appellant exercised supervisory influence over the businesses both in her capacity as stockholder and as administratrix of her husband's estate. Actual operation of the businesses was carried on by Appellant's three sons.

Prior to the period here in question, Appellant's husband built a house in Vancouver, Washington, not far from Portland. For many years this house was the home of the Dant family, which included three sons and two daughters.

"In 1941 a house was built in Palm Springs, California, where Appellant and also her husband, prior to his death, spent the winters. The Palm Springs house was opened before each period of time spent there by Appellant and closed when she returned either to Oregon or Washington. A local firm performed the service of opening and closing the house each year. Generally, Appellant would arrive at her Palm Springs house in the fall of each year and remain until late spring. During the years in question Appellant spent from 6-1/2 to 8 months in California each year. Her twin granddaughters, adopted by Appellant in 1949 after

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their own mother, Appellant's daughter, had died, attended private schools in Palm Springs.

During the years 1948 through 1952 Appellant continued to maintain the Vancouver house, which was open all year ~~round~~. She registered to vote, filed federal income tax returns and registered her automobiles in Washington.

In 1952 Appellant sold the house in Vancouver and purchased another in Portland, Oregon, where her children had moved after her husband's death. The new house was near the home of one of her sons. This house was kept open all year round whether Appellant was there or not. During the ~~years~~ 1952 through 1955 Appellant paid the Oregon personal income tax, registered to vote there, registered her automobiles there, listed Oregon as her residence when applying for a passport and generally listed Portland, Oregon, as her residence address.

During all of the years under appeal Appellant received her primary medical care, legal, insurance and financial advice from individuals or firms in the Portland, Oregon, area. Her bank account, consisting of approximately one million dollars, was located in Portland, Oregon. Only a relatively small account was maintained in Palm Springs for household expenses incurred while in California.

In 1956 the family business was sold and the family members left Oregon, two of the sons moving to California. At that time Appellant sold her house in Portland, Oregon, and purchased a house in La Jolla, California. She kept her house in Palm Springs which she continued to use in the winter. Appellant has considered the house in La Jolla as her permanent residence since the time she moved there in 1956.

The sole issue to be determined is whether Appellant was a resident of California during the years 1948 through 1955.

The law and regulations applicable to this issue are as follows:

"Resident" includes:

- (a) Every individual who is in this State for other than a temporary or transitory purpose.
- (b) Every individual domiciled in this State who is outside the State for a temporary or a transitory purpose.

Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State. (Rev. & Tax. Code, § 17014 [formerly § 17013].)

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... Under this definition, an individual may be a resident although not domiciled in this State.... The purpose of this definition is to include in the category of individuals who are taxable upon their entire net income, regardless of whether derived from sources within or without the State, all individuals who are physically present in this State enjoying the benefit and protection of its laws and government, except individuals who are here temporarily, and to exclude from this category all individuals who, although domiciled in this State are physically present in some other state or country for other than temporary or transitory purposes, and, hence, do not obtain the benefits accorded by the laws and Government of this State. (Cal. Admin. Code, Tit. 18, Reg. 17013-17015(a).)

Regulations of the Franchise Tax Board also provide, in part, as follows:

Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case.

* * *

The underlying theory of Sections 17013-17015 is that the state with which a person has the closest connection during the taxable year is the state of his residence ... (Cal. Admin.-Code, Tit. 18, Reg. 17013-17015(b).)

Without making a restatement of all the facts, we find that the preponderance of evidence shows that Appellant's closest connection during the years in question was not with California. Several of the more important factors which lead us to this conclusion are the absence of business and financial connections with this State, the consistent treatment of the Palm Springs house as a place for winter vacations and the fact that at all times Appellant maintained and kept open a house in either Oregon or Washington near her family.

The fact that Appellant was physically present in California more than half of each year is not in itself determinative of her status. (Appeal of Clete L., Cecelia and Hilda Boyle, Cal. St. Bd. of Equal., DDec. 16, 1958, 2 JCH Cal. Tax Cas. Par. 201-189; 3 P-H St. & Cal Tax Serv. Cal. Par. 58140.)

We hold that Appellant was not a resident of California during the years in question.

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O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, ~~that~~ the action of the Franchise Tax Board on the protests of Mabelle M. Dant to proposed assessments of personal income tax in the amounts of \$2,891.95, \$32,038.34, \$3,512.04, \$13,599.89, \$2,490.36, \$2,510.92, \$2,566.37 and \$2,047.71 for the years 1948 through 1955, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 27th day of August, 1962, by the State Board of Equalization.

Geo. R. Reilly, Chairman

Richard Mevins, Member

Paul R. Leake, Member

John W. Lynch, Member

Alan Cranston, Member

ATTEST: Dixwell L. Pierce, Secretary